

# Notice of Allowability

Application No.

09/899,718

Examiner

Daniel M Sullivan

Applicant(s)

SPRUNCK ET AL.

Art Unit

1636

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the paper filed on 27 August 2004.
2. ☒ The allowed claim(s) is/are 1 and 3-16.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

- |                                                                                                                     |                                                                                                            |
|---------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)                                                    | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>11/16/04</u> |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                                        |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance                       |
|                                                                                                                     | 9. <input type="checkbox"/> Other _____                                                                    |

**EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Anne-Marie Yvon on 16 November 2004.

The application has been amended as follows:

In the claims

1. (Currently amended) An isolated nucleic acid molecule with the function of a caryopsis-specific promoter, which nucleic acid molecule:

- a) comprises the nucleic acid sequence defined by ~~Seq ID No.~~SEQ ID NO: 1 or deposited by DSM 13398 (plasmid p 11/1);
- b) ~~comprises one or more sequence element selected from the group consisting of~~
  - i) ~~caagcaaaagg cgegtggee agceacgac~~ (Seq ID No. 2);
  - ii) ~~agaaacaaac aaacaaacaa aaaagt~~ (Seq ID No. 3);
  - iii) ~~ceetleagga egatgetteg gtgeettaag acacetaac ttgtgteta tgacatgtga gceaacag atgget~~ (Seq ID No. 4);
  - iv) ~~cccgtetagg cgttegggtg ceggee~~ (Seq ID No. 5);
  - v) ~~cagggageet tega~~ (Seq ID No. 6);
  - vi) ~~teagceagtt cacecegtg caeg~~ (Seq ID No. 7) and
  - vii) ~~tactetggte atgttaa~~ (Seq ID No. 8);

Art Unit: 1636

- e**b**) comprises a functional portion of ~~Seq ID No.~~SEQ ID NO: 1;
- e**c**) comprises a sequence which hybridizes with ~~Seq ID No.~~SEQ ID NO: 1, or the complement thereof, under hybridization conditions comprising a hybridization temperature of 65-68°C, a hybridization buffer salt concentration of 2X SSC, a wash temperature of 65-68°C, and a wash buffer salt concentration of 0.2X SSC; and/or
- e**d**) comprises a sequence which has approximately 95-99% identity with ~~Seq ID No.~~SEQ ID NO: 1.

The following is an examiner's statement of reasons for allowance:

In a telephone interview on 16 November 2004, Applicant's representative was informed that the Examiner believes part (b) of claim 1 lacks sufficient descriptive support to comply with the written description requirement of 35 USC §112, first paragraph. After consulting with the applicants, applicant's representative, while not acquiescing to the correctness of the Examiner's position, agreed to cancel the subject matter of claim 1, part (b) in order to expedite allowance of the application.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Art Unit: 1636

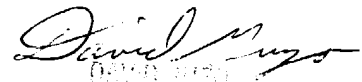
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel M Sullivan whose telephone number is 571-272-0779.

The examiner can normally be reached on Monday through Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel, Ph.D. can be reached on 571-272-0781. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel M Sullivan, Ph.D.  
Examiner  
Art Unit 1636

  
DAVID M. SULLIVAN  
PRIMARY EXAMINER